

REMARKS

Claims 1-19, 22 and 23 are pending in the instant application. Applicants have canceled Claims 22 and 23, without prejudice to filing a continuation thereto. The Examiner has required a restriction of the claimed invention under 35 U.S.C. 121 from the following groups:

- I. Claims 1-6, drawn to the compound of the formula I of claim 1 or a composition which comprises the compound.
- II. Claims 7-19, drawn to a method of modulating the activity of Protein kinases (PK) or treating PK-related diseases such as cancer.
- III. Claims 22 and 23, drawn to a process for the preparation of an alkyl 5-iodo-1H-indole-carboxylate.

The Examiner first suggests that the claims of Groups I-III lack unity of invention because they lack a special technical feature.

The Examiner first suggests that the claims of Groups I-III are distinct one from the other because the three groups of inventions are not so linked as to form a single general inventive concept. The Examiner suggests that the groups do not share a "special technical feature" which distinguishes the claimed invention from the prior art, in particular compounds disclosed in U.S. Pat. No. 5,527,819.

Applicants respectfully contend that there is a special technical feature that is incorporated in the compounds disclosed and claimed in Claim 4 of the instant application that distinguishes those compounds from the compounds specifically disclosed as HIV reverse transcriptase inhibitors in the '819 patent. Applicants note that the specific compounds disclosed and claimed in the instant application all incorporate a carboxamide moiety in the 2-position of the indole and a substituted aminosulfonyl moiety in the 3-position of the indole. This particular feature of the specifically disclosed tyrosine kinase inhibitors useful for the treatment of cancer distinguishes those compounds from the limited number of indole-3-sulfonamide compounds specifically described in the '819 patent. For this reason, Applicants respectfully contend that

the instantly claimed specific compounds do share a “special technical feature” and that the finding that the claimed invention lack a unity of invention is improper and the Restriction Requirement should be withdrawn.

Applicants further note that they have deleted Claims 22 and 23, without prejudice. Therefore, all of the currently pending inventions are directed to compounds falling within the scope of Claim 1 as filed or their use in the treatment of cancer. Applicants respectfully contend that a search of the prior art directed to the compounds of the formula I would not be an undue burden on the Examiner and would also clearly encompass all of the previously disclosed uses of such compounds (if such uses were previously known). A focused search on formula I compounds would be comprehensive for all of Groups I-II described by the Examiner. MPEP 803 provides:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

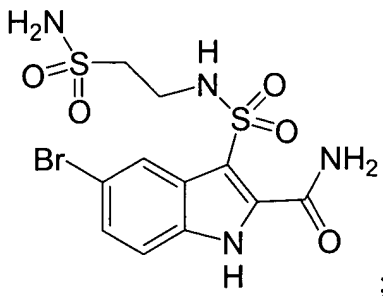
- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

Because there would be no serious burden on the Examiner in searching such closely related inventions of Groups I and II as set forth by the Examiner, Applicant respectfully contends that the restriction requirement is improper.

Despite the Applicants contention that the Restriction Requirement is improper, Applicants respectfully elect Group I for examination, with traverse.

Applicants are required to elect a single disclosed species with a corresponding chemical structure for prosecution on the merits. Applicants hereby elect, with traverse, as a species the following compound:

3-({[2-(Aminosulfonyl)ethyl]amino}sulfonyl)-5-bromo-1*H*-indole-2-carboxamide



or the pharmaceutically acceptable salt thereof.

Applicants respectfully contend that Claims 1-19 as filed are allowable and an early Notice of Allowance is earnestly solicited. If a telephonic communication with Applicants' representative will aid in the advancement of the prosecution of this application, please telephone the representative indicated below.

Respectfully submitted,

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